



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** CH2M Hill Southeast, Inc.

**File:** B-244707; B-244707.2

**Date:** October 31, 1991

Donald G. Gavin, Esq., L. James D'Agostino, Esq., Lori R. Shapiro, Esq., and William L. Cregger, Esq., Wickwire Gavin, P.E., for the protester.

Philip J. Davis, Esq., Phillip H. Harrington, Esq., and Rand L. Allen, Esq., for Research Triangle Institute, an interested party.

Jordan A. Strauss, Esq., and Monica Thornton, Esq., Environmental Protection Agency, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Award was properly made to the low cost offeror in a negotiated procurement where the procuring agency reasonably determined that the offers were technically equal.
2. General Accounting Office will not object to evaluation of technical and cost proposals where review of source selection documents show that the evaluation was fair and reasonable and consistent with the evaluation criteria in the solicitation.
3. The composition of technical evaluation panels is within the discretion of the contracting agency and, as such, will not be reviewed by the General Accounting Office absent a showing of possible bad faith, fraud, conflict of interest or actual bias on the part of evaluators.
4. Protest is untimely when filed more than 10 working days after basis of protest was known.

### DECISION

CH2M Hill Southeast, Inc. protests the award of a contract to Research Triangle Institute (RTI), under request for proposal (RFP) No. W002296-D1, issued by the Environmental Protection Agency (EPA) for the acquisition of service to support the Office of Emergency and Remedial Response in

planning, managing, implementing, and evaluating the Superfund program. CH2M, the incumbent contractor, alleges that the EPA did not follow the RFP evaluation criteria in evaluating proposals, and that the composition of the technical evaluation panel was deficient because certain panel members did not have the requisite technical background to properly evaluate proposals.

The protest is denied in part and dismissed in part.

The RFP, issued on September 28, 1990, provided that award would be made to the offeror whose proposal is the most advantageous to the government, all factors considered. It further stated that technical quality was more important than cost, but that as proposals became more equal in merit, cost would be more important. The RFP, as amended, requested the submission of separate technical and cost proposals and contemplated the award of a level-of-effort, cost-plus-fixed-fee contract. The RFP provided specific labor classifications for proposed professional employees and also provided guidelines for the distribution of level-of-effort hours for professional employees referred to as Professional-Grade (P-Grade) distribution. The RFP provided the following P-Grade distribution scheme:

- Professional Level 4 - 9 percent of base/option
- Professional Level 3 - 10 percent of base/option
- Professional Level 2 - 26 percent of base/option
- Professional Level 1 - 55 percent of base/option

For personnel employed at professional level 4, the RFP provided that they generally have a Ph.D and 10 years of experience and hold the title project leader or chief engineer. Level 3 employees were stated to generally have a Masters Degree or equivalent and 6-12 years experience and work under the supervision of the project leader or chief engineer and hold the title project engineer or group leader. Personnel at Level 2 were described in the RFP as engineer or analyst with a B.S. degree and 3-8 years experience. Level 1 professionals work under the supervision of the project leader and are entry level personnel.

The RFP contained the following four principal technical evaluation factors, scored for a total of 100 points: (1) management plan, 20 points; (2) qualification and commitment of personnel, 35 points; (3) corporate experience, 15 points; and (4) technical experience and approach, 30 points. Concerning cost, the RFP provided that proposals would be evaluated to assess whether proposed costs are an adequate reflection of an offeror's understanding of the requirements.

Three firms submitted proposals by the November 15, 1990, due date for the receipt of proposals. The technical proposals were forwarded to the technical evaluation panel (TEP) for evaluation. The cost proposals were submitted to a business evaluation panel (BEP). The TEP included individuals who have served as EPA work assignment managers under the existing contract, representing the Office of Program Management, the Hazardous Site Control Division and the Hazardous Site Evaluation Division. The TEP evaluated proposals and determined that all three proposals were technically acceptable. The TEP and BEP filed reports with the contracting officer. The technical rating and cost of the initial proposals were as follows:

<u>OFFEROR</u>	<u>TECHNICAL RATING</u>	<u>PROPOSED COST</u>
RTI	76.9	\$6,798,512
CH2M	73.6	7,106,655
A	67.5	5,886,185

The contracting officer included all three proposals in the competitive range. The agency held technical discussions with all offerors and revised proposals were received on April 3, 1991. After the evaluation of revised proposals by the TEP, cost discussions were held with all offerors and the agency requested best and final offers (BAFOs). After receipt of the BAFOs, the BEP reconvened to evaluate the offerors' proposed estimated total costs; all three offers were considered reasonable. The results of the final technical evaluation were as follows:

<u>OFFEROR</u>	<u>TECHNICAL RATING</u>	<u>TOTAL PRICE</u>
RTI	81.3	\$7,553,004
CH2M	80.1	7,937,974
A	77.5	6,401,868

The TEP and BEP submitted its findings to a source selection board consisting of the contracting officer and another agency official. This board prepared a report integrating the TEP and BEP findings on all offerors and recommended an award to RTI. The report concluded that although Offeror A proposed the lowest estimated cost, its proposal did not exhibit the technical merit of the other offerors and was determined not to be most advantageous to the government. CH2M and RTI were considered "almost equal with respect to technical merit," with only a "marginal difference" between their proposals. Award therefore was proposed to RTI, based on both its technical merit and low proposed cost. The report and recommendation went to the source selection official and was approved. Award was made to RTI. CH2M filed its protest with our Office on July 5.

CH2M contends that the technical evaluation of proposals was improper.<sup>1</sup> Specifically, CH2M argues that its proposal was downgraded unreasonably because it only provided "directly" relevant Superfund experience. CH2M maintains that as the incumbent contractor, it should have been rated superior to RTI and the award should have been made to CH2M because the RFP provided that technical considerations were more important.

We will examine an agency's evaluation to insure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

Regarding corporate experience, the RFP required offerors to demonstrate capability and experience on contracts/projects of similar size and complexity as the work solicited. Offerors had to show corporate ability to simultaneously coordinate a large number of interrelated technical, environmental and management support tasks. Offerors also had to demonstrate experience and capability for rapid response with high quality products on short lead-time

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<sup>1</sup>CH2M argues that the evaluation was defective because one evaluator did not provide a required narrative to explain his low scores and because the TEP failed to provide narratives to explain the distinctions between points as required by 48 C.F.R. § 1515.608 (1990). The requirement for such a narrative was also communicated to the evaluators by the contracting officer. The evaluator in question had narratives for some, but not all factors for both the protester and awardee. However, the point scores presented to the source selection official in the source selection board report were accompanied by detailed narrative discussions of the strengths and weaknesses of each proposal as found by the evaluators. We think this provided the source selection official with a sufficient basis on which to make an informed decision, which is not subject to objection simply because the procedures of EPA's evaluation regulations may not have been followed precisely by one evaluator. In our view, the critical concern is whether or not the source selection official had an adequate record for his decision. We think he did here, notwithstanding one evaluator's failure to provide a narrative for certain factors.

tasking. The RFP specifically provided that past work on the Superfund program or hazardous waste issues was not mandatory.

The record shows that all three offerors scored equally in corporate experience with each receiving 13 points out of a possible 15. The evaluators determined that CH2M demonstrated a detailed knowledge of and insight into the proposed scope of work. CH2M was found to have demonstrated experience in managing the current and previous contract and a demonstrated ability to simultaneously coordinate a large number of interrelated technical, environmental and management support tasks. The evaluators also found that CH2M cited impressive examples of its ability to provide quick responses to short lead-time tasks.

On the other hand, the evaluators also found that RTI's experience demonstrated its capability and experience on contracts/projects similar in size and complexity to the proposed statement of work. RTI was found to have clearly demonstrated its ability to simultaneously coordinate a large number of tasks through its participation in a substantial number of multi-task projects. RTI was also found to have provided an excellent demonstration of its experience in responding to short-term tasking.

While CH2M believes that its direct Superfund experience should have resulted in a higher score and that its proposal discussion of only its Superfund experience might have led to its being downgraded under the corporate experience criterion, it is clear that the source selection official, based on the narrative discussion of the proposals in the source selection board report, found the two firms to be essentially equal overall. Thus, even if CH2M had received the total 15 points for corporate experience, we see no basis for concluding that the minor change in total point score would have changed the determination that the two offers were technically equal.

To the extent CH2M is protesting the RFP's evaluation criteria, which did not, with respect to the corporate experience factor, require Superfund experience, the protest is untimely. The solicitation required offerors to have experience on contracts/projects of similar size and complexity as the work solicited and specifically provided that Superfund experience was not necessary. As such, CH2M's contention concerns an alleged solicitation impropriety which should have been protested prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

CH2M was found to have a weakness with respect to the technical experience and approach evaluation factor because of its "unsupported development of innovative approaches." CH2M received 22.5 points (while RTI received 24 points) out of a possible 30 for this factor. The record shows that during discussions, CH2M was specifically requested to provide examples of ideas that were more unique and innovative than those presented in its initial proposal. CH2M in response provided information that reiterated what was in its original proposal but did not provide anything additional. Under the circumstance, see no impropriety with the evaluation in this respect.

CH2M next argues that the EPA mis-evaluated its proposal with respect to its P-Grade distribution under the personnel factor. CH2M maintains that its proposed P-Grade distribution mix was not top heavy as stated by the agency and that it developed its cost proposal in accordance with the P-Grade distribution mix called for by the solicitation.

As previously stated, the solicitation provided specific guidelines for the distribution of level of effort hours among professional employees with the higher level professionals comprising a smaller percentage of the professional staff. The evaluators found that CH2M proposed a staffing distribution that failed to conform to these guidelines and that was in fact exactly opposite of the guidelines in that CH2M proposed an excessive number of employees at the higher cost professional levels 3 and 4. Because the evaluators were concerned that highly skilled employees would be performing work assignments more appropriately staffed by lower skilled employees, during discussions CH2M was requested to provide for a more equitable distribution of staffing. In response, CH2M did not change its distribution scheme, but merely offered to provide additional lower cost level 1 professionals at the time of performance if that was what the agency wanted.

It is clear from the record that CH2M did not propose in its technical proposal a P-Grade distribution consistent with the guidelines set forth in the solicitation. In fact, CH2M took the position in discussions that its distribution was based on its past experience and accepted the risk that it might be downgraded if the agency disagreed with its position. CH2M does argue, however, that it provided in its cost proposal the P-Grade distribution requested by the agency. That does not help the protester's cause, however. Offerors were directed to submit separate cost and technical proposals. These technical and cost proposals were evaluated by separate panels. An agency is not required to search through an offeror's cost proposal to find information that should form a part of the technical proposal, particularly where, as here, during discussions,

the offeror is specifically asked to address the matter in its technical proposal. See Parameter, Inc., B-241652, Feb. 28, 1991, 91-1 CPD ¶ 229. Moreover, even if the agency had reviewed the cost proposal during technical evaluation of the BAFO, CH2M's offer would have been ambiguous as to what personnel distribution it intended. We consequently find nothing unreasonable in the agency's evaluation of personnel and its failure to award the protester maximum points in this category.<sup>2</sup>

CH2M also asserts that the award to RTI, the low offeror, was improper because of the solicitation's emphasis on technical factors. We disagree. While the RFP did state that technical was more important than cost, it also provided that where proposals were equal in merit, cost would become more important. Award to RTI was consistent with the RFP, since its higher-scored offer reasonably was considered essentially equal to CH2M's offer and was lower in cost.

CH2M next asserts that the make-up of the evaluation panel was deficient because certain panel members did not have the requisite technical background to properly evaluate the proposals. CH2M requests that an investigation into the backgrounds of all panel members be performed to insure that a qualified evaluation team existed.

The selection of individuals to serve as proposal evaluators is essentially a matter within the discretion of the agency, and we will not appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators. Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. CH2M has made no such showing here. To the extent that CH2M is asking us to conduct an investigation to substantiate its allegations, the protester has the obligation of presenting its own case. We do not conduct investigations for the purpose of establishing the validity of a protester's argument. Fayetteville Group Practice, Inc., B-226422.5, May 16, 1988, 88-1 CPD ¶ 456.

In its comments on the agency report filed in response to this protest, CH2M for the first time argues that the extremely low scoring of its proposal by one evaluator demonstrated an improper bias against CH2M. In a supplement to its initial protest, CH2M elaborates on its bias allegation, asserting that the origins of the evaluator's bias can

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<sup>2</sup>The protester alleges that RTI improperly was given credit for use of higher level personnel. The record shows that RTI's personnel distribution was rated high because it conformed to the agency's distribution plan.



be traced to his involvement as EPA Work Assignment Manager on the prior contract and that this evaluator improperly utilized his perception of CH2M's past performance in downgrading CH2M's proposal.

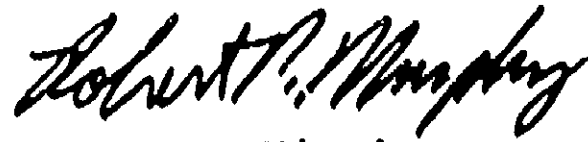
Since this specific issue was not raised in the initial protest submission, it must independently satisfy timeliness requirements. John Short & Assocs., Inc., B-239358, Aug. 23, 1990, 90-2 CPD ¶ 150. CH2M's protest concerning the alleged bias is based primarily on a summary of scores matrix which identifies each panel member, reflects each evaluator's individual pre-consensus score for each evaluation criterion, and gives the panel's consensus score for each criterion. This matrix was contained in the original agency report which CH2M acknowledges it received on August 19. CH2M therefore was required to raise this issue by September 3, 10 working days later. 4 C.F.R. § 21.2(a)(2) (1991). Normally, the firm's comments on the report also would have been due on that date. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(j)). Here, however, CH2M was not required to file its comments until September 10 because the firm did not receive the complete report until August 28. This did not, however, waive the timeliness requirements for filing a protest. The protester maintains that it was not until after it received the individual evaluation sheets on August 28 and reviewed the high scores and supporting comments by the other evaluators that contrasted with the extremely low scores and lack of supporting comments by one evaluator that it had a basis for alleging bias. However, the protester's allegation of bias, raised for the first time in its comments to the agency report, was based on the low scoring of its proposal by the one evaluator, a matter evident from the copy of the agency report received by the protester on August 19. Thus, we view the issue as untimely raised.

We point out, however, that in addressing allegations of bias on the part of an evaluation official, we focus on whether the individual involved influenced the procurement on behalf of the awardee or against the protester. See Quality Sys., Inc., B-235344; B-235344.2, Aug. 31, 1989, 89-2 CPD ¶ 197. Here, the record shows that the source selection board, consisting of two officials, integrated the TEP and BEP findings and made a recommendation that was evaluated and approved by the source selection official. Notwithstanding any alleged bias on the part of one evaluator, the source selection report details the perceived strengths and weaknesses of each proposal. This document does not support any allegation of bias against CH2M based on its performance as the incumbent contractor. Rather, as previously stated, CH2M was specifically cited for the fact



that because of its incumbency it demonstrated a detailed knowledge and insight into the proposed scope of work. Thus, we see no evidence in the record that the evaluator improperly influenced the outcome of the procurement.

The protests are denied in part and dismissed in part.

*for*   
James F. Hinchman  
General Counsel